

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

ASTANIEL JARVIS MANN, PIP HENG,
ELIJAH ADCOCK, RONNY N. ASKEW,
RICKIE LEE FOX,
JOSEPH DANIEL FINCHER, and
SHEDRICK D, ROSS,

Plaintiffs,

VS.

CIVIL ACTION FILE
NO. 7:08-CV-5 (HL)

Commissioner JAMES DONALD,
RICK JACOBS, SARAH DRAPER,
Dr. SHARON LEWIS, MD., Warden HART,
Deputy Warden MCLAUGHLIN,
ALBERT JONES, Captain MORRIS
Lt. MAINE, Officer POWELL,¹
Officer JESSE HOWELL,
Officer T. BROWN, Officer YANCEY,
Officer CANNON, Officer SNAKE,²
Officer SMITH, Officer SHANE,³
Officer GRAINGER,⁴ Officer RADCLIFF,⁵
Sgt. BOND, Officer PAGE, Officer DANIEL,
Officer BATES, and
Officers JOHN DOE No. 1 and 2,

Defendants.

RECOMMENDATION

This is a section 1983 action brought by seven plaintiffs, all of whom are or were inmates

¹This defendant's name is evidently POWERS and will be referred to as such herein.

²This defendant's name is evidently SCHNAKE and will be referred to as such herein.

³This defendant's name is evidently SAIN and will be referred to as such herein.

⁴This defendant was evidently no longer employed at Valdosta State Prison when this law suit was filed, and his present whereabouts are not known. He is the only defendant for whom the Georgia Attorney General's Office has not made an entry of appearance other than defendants JOHN DOE No. 1 and 2.

⁵This defendant's name is evidently RATLIFF and will be referred to as such herein.

at Valdosta State Prison. They are represented in this action by Attorney McNeill Stokes of Atlanta. The Georgia State Attorney General's Office had made an entry of appearance on behalf of all defendants other than those as explained in fn. 4 as all defendants are or were employed by the Georgia Department of Corrections in various capacities when the varying circumstances giving rise to this lawsuit allegedly arose.

This complaint was originally filed on January 8, 2008 (doc. 1). On March 10, 2008, the Defendants, filed a pre-answer motion to dismiss on several grounds. On February 24, 2009, the undersigned recommended that the motion to dismiss be granted in part and denied in part. Consequently, no answer has yet been filed herein.

On July 27, 2008, counsel for plaintiffs filed a motion (doc. 27) in which he seeks to add as additional Plaintiffs Ellis Keel, Michael A. Walker, George C. Haskell, Jr., Andrew Hart, and Joseph Alan Greene. That same motion also seeks to add as additional defendants, Officers Lucas, Proctor, Glynn, and Jackson along with Lt. Wadell and a Lt. Riddall. All of the 'new' plaintiffs are or were inmates at Valdosta State Prison who allege that they were summarily beaten for no reason by varying combinations of the defendants. All of the 'new' defendants are or were employed at Valdosta State Prison.

On August 11, 2008, defendants responded to the motion and acknowledged that under Federal Rule 15(a) plaintiffs had a right to amend their complaint once as a matter of right since no answer has yet been filed and that a pre-answer motion to dismiss is not a responsive pleading for Rule 15(a) purposes. Williams v. Board of Regents of the Univ. System of Georgia, 477 F.3d 1282, 1291 (11th Cir. 2007)(doc. 30). "Defendants do not, however, agree that joinder of parties/defendants is appropriate, and do not waive any other defense that may be available, including but not limited to, those defenses raised in the pending Motion to Dismiss."(doc. 30, p.

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It is therefore the RECOMMENDATION of the undersigned that, pursuant to Federal Rule of Civil Procedure 15(a), and subject to the above quoted reservation of rights, that the motion to add plaintiffs and defendants be granted. Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable Hugh Lawson, United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

NOTE: In the event this Recommendation is adopted and made the order of the court by the United States District Judge to whom this matter is assigned, the Clerk of Court will serve the added defendants according to law.

SO RECOMMENDED, this 27th day of February 2009.

/s/ **Richard L. Hodge**

RICHARD L. HODGE

UNITED STATES MAGISTRATE JUDGE